



8 Mt. Pleasant, South Carolina 29464-1792 BY: MR. RONALD L. MOTLEY  
9  
10 For the Defendant Lorillard Tobacco Company:  
11 SHOOK, HARDY & BACON 1201 Main Street  
12 Kansas City, Missouri 66206 BY: MS. GAY L. TEDDER  
13 MR. JERAMI D. KEMNITZ MR. ANDREW CARPENTER  
14

15 For the witness:  
16 JONES & KELLER, P.C. World Trade Center  
17 1625 Broadway, 16th Floor Denver, Colorado 80202  
18 BY: MR. DAVID BYASSEE  
19 Also Present: Mr. John Baden  
20 Ms. Carol Wade, videographer Ms. Kelly Miller,  
videographer  
21 Mr. Jerry Goffe, videographer  
22  
23  
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page 3

page 4

1 MS. TEDDER: The only thing I want to  
2 state for the record is, when we originally  
3 raised the issue before Judge Gold of the terms  
4 under which this deposition would be conducted,  
5 it's my understanding that at Dr. Kotin's  
6 counsel's request, one of the conditions was  
7 that a nurse be present at this deposition, and  
8 I just want to state for the record that  
9 there's no one present, and it's my  
10 understanding that that's at Dr. Kotin's  
11 request.

12 MR. BYASSEE: That is at Dr. Kotin's  
13 option.

14 MS. TEDDER: Yes.

15 PAUL KOTIN, M.D.,  
16 after having been first duly sworn under oath,  
17 was questioned and testified as follows:

18 EXAMINATION

19 BY MR. MOTLEY:

20 Q. Good morning, Dr. Kotin.

21 A. Good morning.

22 Q. Our aim is to make this procedure as  
23 convenient and comfortable for you as possible, and  
24 if you need to take a break at any time, you just

page 4

page 5

1 raise your hand or tell me you need to take a break  
2 and we'll stop immediately.

3 A. I'm grateful. Thank you.

4 Q. Yes, sir. State your name again for the  
5 record, just for --

6 A. Paul Kotin.

7 Q. MD?

8 A. MD.

9 Q. Yes, sir. I haven't seen you in over 20  
10 years. You seem to be getting along pretty good  
11 today. You feel okay today?

12 A. Yes, sir, I do.

13 Q. Okay. Good. [DELETED]

14 N and I believe that's because that's  
15 where you live now.

16 A. Correct.

17 Q. And how old are you, sir?

18 A. I'll be 84 next month. I'm 83 and 11  
19 months.

20 Q. And are you married?

21 A. Yes, sir.

22 Q. How long have you been married to your  
23 wife?

24 A. 30 years.

page 5

page 6

1 Q. Don't forget that date.

2 A. No.

3 Q. And you have children?

4 A. Yes, sir.

5 Q. Now, while you are, I guess, what you'd  
6 call semiretired, do you still consult from time to  
7 time on medical issues with anybody?

8 A. Yes, sir.

9 Q. Okay. I have a curriculum vitae or resume  
10 in front of me marked as Kotin Exhibit 1.

11 (Exhibit 1 marked.)

12 Q. And I'm just going to summarize it real  
13 quickly, just so the jury gets the flavor of who you  
14 are and where you have been.

15 You graduated with an MD degree from the  
16 University of Illinois Medical School in 1940; is  
17 that correct?

18 A. Well, actually, it was in -- the MD was  
19 granted in 1939. I graduated before then, because  
20 in those days you finished your internship before  
21 the actual MD was given to you.

22 Q. I see. And you were board certified by  
23 the American Board of Pathology as a diplomate in  
24 1953?

page 6

page 7

1 A. Yes, sir.

2 Q. Now, Doctor, you retired from  
3 Johns-Manville Corporation in 1981; correct?

4 A. Correct.

5 Q. And you achieved the position of senior  
6 vice president for health, safety and environment  
7 for a period of six years prior to retirement  
8 with --

9 A. Yes, sir.

10 Q. Now, Doctor, you came to Johns-Manville in  
11 1974 as being the dean of the School of Medicine at  
12 Temple University Health Science Center in  
13 Philadelphia; is that correct?

14 A. Yes, sir.

15 Q. And earlier in your career, in the late  
16 1960s, you were director of the National Institute  
17 of Environmental and Health Sciences, part of the  
18 NIH; is that correct?

19 A. Yes, sir.

20 Q. Would you please take a moment and  
21 describe to the jury what the NIEHS was and is  
22 currently?

23 A. The NIEHS is and was a component of the  
24 National Institutes of Health whose responsibility

page 7

page 8

1 was to provide a scientific base for all of the  
2 regulatory agencies, so that when regulations were

3 promulgated, they would have a scientific rationale.

4 Q. Were you one of the first directors?

5 A. I was the founding director.

6 Q. You were the founding director of the  
7 National Institute of Environmental Health Sciences.  
8 Prior to that time -- and I'm not going through  
9 everything you have done, in the interests of  
10 time -- you were a scientific director for etiology,  
11 that's spelled E-T-I-O-L-O-G-Y, of the National  
12 Cancer Institute; is that correct?

13 A. Yes, sir.

14 Q. Now, "etiology" is a term the jury may or  
15 may not have heard by the time they see this video,  
16 so would you just take a moment and explain what  
17 etiology means in the context of cancer?

18 A. The meaning of etiology is causation. In  
19 other words, I was responsible for the national  
20 government's activities in the field of research,  
21 epidemiology, and all factors relating to  
22 understanding the causes of cancer.

23 Q. And Doctor, you spent a good bit of time  
24 in your early career as a pathologist and research

page 8

page 9

1 pathologist in Los Angeles and teaching at the  
2 University of Southern California School of  
3 Medicine; is that correct?

4 A. Yes, sir.

5 MS. TEDDER: Objection, form.

6 Q. Doctor, were you in the United States Army  
7 Medical Corps during World War II?

8 A. Yes, sir.

9 Q. Now, from 1954, I believe, until about  
10 1965, were you a member of the Scientific Advisory  
11 Board of the Council for Tobacco Research or its  
12 predecessor, the Tobacco Industry Research  
13 Committee?

14 A. Its predecessor, the Tobacco Industry  
15 Research Committee.

16 Q. Now, you were also a member, I believe, of  
17 the Cancer Prevention Committee of the UICC. Would  
18 you briefly tell the jury what the UICC was?

19 A. It's Latin, in part. It's the  
20 International Union against Cancer, literally  
21 translated, and it was responsible for coordinating  
22 cancer research around the world, both -- in every  
23 constituency, beginning with the World Health  
24 Organization through governments, through academic

page 9

page 10

1 and research institutes, both private and public.

2 Q. In your early career, Doctor, did you take  
3 an interest as a research person at a major medical  
4 center in air pollution?

5 A. Yes, sir.

6 MS. TEDDER: Objection, leading.

7 Q. Well, I'll rephrase that. What was an  
8 early interest of yours at the University of  
9 Southern California as it relates to human health,  
10 air pollutants, and lung disease?

11 A. Well, my whole interest in cancer, my  
12 primary interest in cancer, has been cancer of the  
13 lung. And living in Los Angeles, where the presence

14 of air pollution and smog was available as a  
15 research activity and a fact that air pollution  
16 contained a series of chemicals that were highly  
17 suspect under the -- with the support of the federal  
18 government, we initiated a program to determine the  
19 relationship, if any, between polluted air and risk  
20 to lung cancer.

21 Q. Among the things that you did in that  
22 investigation were animal studies?

23 MS. TEDDER: Objection, leading.

24 Dr. Kotin, if you'd let me make my objection

page 10

page 11

1 before you answer your question, I'd appreciate  
2 it.

3 A. I apologize. I didn't know that. No  
4 problem.

5 Q. Quite all right. I was asking you about  
6 what one area of your interest in your investigation  
7 of air pollution and human health was.

8 A. Well, it was the exposure -- first of all,  
9 the analysis of the components of polluted air, and  
10 then the exposure of a variety of species to  
11 polluted air in inhalation chambers, and also study  
12 of the sources of the air pollutants.

13 Q. Now, during your career, have you  
14 published a number of articles -- and I promise you,  
15 I won't go through all of these -- where you have  
16 commented in scientific publications about various  
17 matters related to your fields of interest?

18 MS. TEDDER: Objection, leading.

19 Q. Have you?

20 A. Yes.

21 Q. And have they included discussions of  
22 human cancer?

23 MS. TEDDER: Objection, leading.

24 A. Yes, sir.

page 11

page 12

1 Q. And have they included a discussion of air  
2 pollutants?

3 MS. TEDDER: Objection, leading. And  
4 Mr. Motley, this is your witness. I'd ask that  
5 you refrain from asking leading questions.

6 MR. MOTLEY: Well, ma'am, you can object  
7 until the cows come home, but I'm going to ask  
8 the questions I want to ask, so you can  
9 continue.

10 MS. TEDDER: I'm going to make my  
11 objection.

12 MR. MOTLEY: I understand. I didn't fuss  
13 at you for making your objections, as frivolous  
14 as they may be.

15 Q. Doctor, have you published articles that  
16 deal with human lung disease?

17 A. Yes, sir.

18 Q. And have you had an interest during your  
19 career on particles that could be breathed in the  
20 human lung?

21 MS. TEDDER: Objection, form.

22 A. Yes, sir.

23 Q. And would you describe for the jury the  
24 nature of that --

page 12

page 13

1 MS. TEDDER: Objection. Also to the  
2 extent you're trying to establish some expert  
3 testimony from this witness, he's here as a  
4 fact witness. He's not been identified as an  
5 expert witness, so to the extent this entire  
6 line of questioning is designed to elicit  
7 expert testimony, I object.

8 MR. MOTLEY: I thought we were reserving,  
9 by court ruling, all objections except to form  
10 of the question.

11 MS. TEDDER: Well...

12 Q. Proceed, Doctor.

13 MS. TEDDER: I'll make my objections.

14 Q. Do you have the question in mind?

15 A. I think you asked, have I in my research  
16 been involved with the materials that are inhaled,  
17 particles and -- yes, sir.

18 Q. And what type of particles generally have  
19 you been interested in?

20 A. Particles that are -- fall into two  
21 categories. Dusts, which we all know, and aerosols.  
22 And aerosols are very, very fine particles,  
23 sometimes liquid, sometimes gaseous, which are  
24 present in the respiratory environment, so that they

page 13

page 14

1 can be inhaled.

2 Q. Doctor, at some point in time did you  
3 receive some awards from the United States  
4 Government, Department of Health, Education and  
5 Welfare?

6 MS. TEDDER: Objection, form.

7 A. Yes, sir.

8 Q. And do you recall what those were?

9 A. Yes. I received the Superior Service  
10 Medal and then I believe I received the  
11 Distinguished Service Award.

12 Q. And upon or near your retirement, as  
13 senior vice president for Johns-Manville, did you  
14 receive an award from the American Occupational  
15 Medical Association?

16 A. Yes, sir.

17 Q. And do you remember the name of that  
18 award?

19 A. Well, I received three awards. It was  
20 either the Sappington award or the Gehrmann award or  
21 the Knudsen award.

22 Q. And what are those given for, sir?

23 MS. TEDDER: Objection, relevance.

24 A. Those are awards given by your peers to

page 14

page 15

1 recognize the distinction and the accomplishments of  
2 your work and your contributions to the field of  
3 occupational medicine.

4 Q. Doctor, with that brief introduction from  
5 your curriculum vitae, I wanted to ask you, you  
6 became a medical doctor in 1939. What has been your  
7 principal area of focus in your professional career?

8 A. Cancer.

9 Q. Cancer. From what aspect, sir?

10 A. Causation, which was reflected in my  
11 position at the National Cancer Institute, and then  
12 the natural history of cancer. The causes of  
13 cancer, the risk to cancer, the natural history,  
14 which means how a cancer behaves once a living thing  
15 is afflicted with cancer. So essentially, it is  
16 from the causation to its ultimate effect.

17 MS. TEDDER: Again, I object to this line  
18 of questioning based on the fact that there's  
19 no -- he's not been identified as an expert  
20 witness, there has been no expert affidavit  
21 filed in this case, so to the extent this is  
22 expert testimony, I again lodge my objection.

23 Q. Doctor, in your professional career, have  
24 you published on subjects involving, first, smoking  
page 15

page 16  
1 and health?

2 MS. TEDDER: Objection, leading.

3 A. Yes, sir.

4 Q. And can you tell me the general nature of  
5 those publications?

6 A. I guess the broad category is the effect  
7 of cigarette smoke, aerosols, on the respiratory  
8 system.

9 Q. The lung system?

10 A. The lung system, yes, sir.

11 Q. Okay. And in those papers have you had  
12 any discussion of the specific effects of cigarette  
13 smoke aerosols on the respiratory system?

14 MS. TEDDER: Objection, form.

15 A. Yes, sir.

16 Q. And just generally what is the nature of  
17 your areas of interest in that regard?

18 A. Well, it was to study the effect of  
19 cigarette smoke on the lining cells of the lung.  
20 These are the cells from which lung cancer is  
21 derived. So we measured and attempted to understand  
22 the effect of cigarette smoke on the lining cells of  
23 the lung, the physiologic defense mechanisms that  
24 the lung has. The lung is endowed with the ability

page 16

page 17

1 to cope with certain insults, and so on. And then  
2 to relate these experimental findings to what I was  
3 saying as a pathologist, and a pathophysiologist,  
4 cancer in the lung in humans.

5 Q. Doctor, have you published upon the  
6 subject of the effect of a combination of exposure  
7 to cigarette smoke aerosols and asbestos fibers?

8 MS. TEDDER: Objection, leading. Again,  
9 Dr. Kotin, please allow me to lodge my  
10 objection.

11 A. I'm sorry. I apologize again. In fact,  
12 accept a blanket apology, if, in fact, I step beyond  
13 normal bounds.

14 MS. TEDDER: Give me a moment to speak.  
15 And again, Mr. Motley, I'd ask that you refrain  
16 from asking leading questions, because this --  
17 you know, obviously, you've designated  
18 Dr. Kotin as your witness and therefore,  
19 leading questions are inappropriate.

20 MR. MOTLEY: You left your black robe in

21 your room, Ms. Tedder.  
22 MS. TEDDER: Perhaps I should go get it.  
23 Q. Doctor, could I have an answer to my last  
24 question? Do you have it in mind?

page 17

page 18

1 A. I do not.  
2 Q. After all that clabber --  
3 A. Would you repeat it, please?  
4 Q. Yes, sir. Have you had an interest in and  
5 studied the interrelationship, if any, of smoking  
6 cigarettes and asbestos fibers with respect to human  
7 health?  
8 MS. TEDDER: Same objection.  
9 A. Yes, sir.  
10 Q. Doctor, have you reviewed any documents or  
11 any written materials in preparation for your  
12 deposition?  
13 A. I have reviewed materials that were  
14 germane to this, yes, sir.  
15 Q. Okay. And Ms. Dix you have met  
16 previously?  
17 A. Yes, sir.  
18 Q. On how many occasions, if you recall?  
19 A. Three or four.  
20 Q. And did she show you some documents that  
21 related, among other things, to your tenure as vice  
22 president of Johns-Manville?  
23 A. Yes, sir.  
24 Q. Did you know Surgeon General Burney?

page 18

page 19

1 A. Yes, sir.  
2 Q. And how was it you came to know Surgeon  
3 General Burney?  
4 A. At one time as surgeon general of the U.S.  
5 Public Health Service, he was my boss.  
6 Q. He was your boss?  
7 A. Yes, sir.  
8 Q. And the same question with respect to  
9 surgeon general Julius Richmond. Have you ever met  
10 Dr. Richmond?  
11 A. Yes, sir.  
12 Q. And what was the occasion for you meeting  
13 him?  
14 A. He was a classmate of mine. We graduated  
15 medical school together.  
16 Q. You maintained a relationship with him?  
17 A. Yes, sir.  
18 Q. The next question is not a surgeon  
19 general, but a pathologist. Dr. John Craighead.  
20 Have you known Dr. Craighead?  
21 A. Yes, sir.  
22 Q. Doctor, if I -- at the expense of being  
23 accused of leading you, can you tell me what years  
24 you were at the Johns-Manville Corporation, employed  
page 19  
page 20  
1 in a scientific position?  
2 A. 1974 to 1981.  
3 Q. Now, Doctor, tell us in your own words how  
4 it was you came to make a career decision to go to  
5 work for Johns-Manville.



6 A. Well, my whole professional career was  
7 oriented to the causes of lung cancer, both in the  
8 general environment and the occupational  
9 environment, and it was inevitable during the course  
10 of my academic career, as well as my government  
11 career, that asbestos would be a component of the  
12 spectrum that one would have to study if one were  
13 going to address the issue of causes of lung cancer.

14 So at the age of 65, when I retired, as I  
15 look back, when I accomplished what I had planned to  
16 accomplish for Temple University as dean of the  
17 medical school, I was asked if, in fact, I'd be  
18 interested in a position with Johns-Manville by the  
19 then medical consultant and medical director of  
20 Johns-Manville.

21 Q. Was that Dr. George Wright?

22 A. Yes, sir. I thought about it, because it  
23 was a complete switch from my whole career being  
24 either on the university campus or the National

page 20

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1 Institutes of Health, and I figured there was one  
2 aspect that, no matter how profoundly you studied  
3 it, as an academician or a federal scientist,  
4 there's one aspect you could not do unless you do --  
5 well, unless you had access to the actual situation  
6 associated with asbestos exposure and any risks that  
7 might be associated with asbestos exposure.

8 And what better way than to have access to  
9 a corporation with, I guess the largest asbestos  
10 corporation in terms of employees, at a level  
11 consistent with the authority and responsibility for  
12 practicing occupational medicine, preventive  
13 medicine, and clinical medicine.

14 Q. Did you have any concerns that you shared  
15 with Johns-Manville about your employment while you  
16 were there?

17 A. Prior to, sir, or during?

18 Q. Well, let's go with prior to.

19 A. Yes. I made it very, very plain that this  
20 was a new vector in my career. I made it very, very  
21 plain that my position in the company would have to  
22 be at a level consistent with authority and  
23 responsibility and that because of the -- not  
24 unique, it's not unique -- but because of the

page 21

page 22

1 special nature of my training and background, I  
2 insisted on direct access to the chief executive  
3 officer and the chairman of the board with issues  
4 that I felt were germane to the performance of my  
5 job.

6 Q. Did you set for yourself any professional  
7 goals when you went to work for Johns-Manville?

8 MS. TEDDER: Objection, form.

9 A. Yes, sir. They were intrinsic to my  
10 discussions prior to coming. In addition to the  
11 corporate responsibility that I mentioned before, I  
12 insisted that the company set up there for the first  
13 time, which since has become a model, a corporate  
14 medical program that was just not limited to the  
15 doctor taking care of the patient. We set up a  
16 program similar to that which one would find in a

17 new university. The program incorporated the hiring  
18 of a pharmacologist toxicologist, an epidemiologist,  
19 appropriate physicians. In other words, an umbrella  
20 under which all of the sciences and disciplines  
21 would work most effectively to achieve my goal.

22 And the goal was to essentially eliminate,  
23 to the maximum extent possible, the risks associated  
24 with asbestos, exposure during its mining,

page 22

page 23

1 manufacturing, distribution.

2 Q. Doctor, during the course of your tenure  
3 with Johns-Manville, did you have an opportunity to  
4 meet a Dr. Irving Selikoff?

5 A. Yes, I knew Dr. Selikoff before.

6 Q. And during your tenure, did you interface  
7 professionally with Dr. Selikoff?

8 MS. TEDDER: Objection, form.

9 A. At least once a month during my seven  
10 years there, six years.

11 Q. Did Johns-Manville and Dr. Selikoff's  
12 institution, the Mount Sinai School of Medicine,  
13 embark on any joint efforts together?

14 A. Yes, sir.

15 MS. TEDDER: Objection, form.

16 A. Yes, sir.

17 Q. And what were the nature of those efforts  
18 that were jointly participated in by Johns-Manville  
19 and Mount Sinai School of Medicine during your  
20 tenure?

21 A. Covered a broad spectrum of joint efforts.  
22 Specific examples, we invited Dr. Selikoff up to our  
23 mine in Newfoundland.

24 Q. In Canada?

page 23

page 24

1 A. In Canada.

2 Q. It's real cold up there.

3 A. Yes, where asbestos was mined, and  
4 essentially he brought his whole crew of specialists  
5 and staff members and said, "Have at it, whatever  
6 you want to do," from examining the miners to  
7 reviewing all the mine records, and so on. That's  
8 one example.

9 Another example. Dr. Selikoff had need of  
10 an electron microscope, which was then becoming an  
11 absolute necessity, and Johns-Manville underwrote  
12 his procuring of an electron microscope. I could go  
13 on for a while.

14 Q. That's okay. I wanted just some examples.

15 A. Those are a couple. There are many, many  
16 more if it becomes urgent or necessary.

17 Q. Yes, sir. Now, Doctor, do you recall  
18 giving a presentation in 1974 at the Mayflower Hotel  
19 to, I believe -- shortly after you joined  
20 Johns-Manville to the Asbestos Information  
21 Association?

22 A. Yes, sir.

23 Q. And do you recall at that time in 1974  
24 what discussion, if any, you might have had to that

page 24

page 25

1 audience about the interrelationship of cigarette

2 smoking and asbestos insofar as it affects human  
3 health?

4 MS. TEDDER: Objection, form.

5 A. I don't recall.

6 Q. You don't recall? Okay. Now, Doctor, as  
7 a practitioner, as you have described it, in the  
8 field for so many years, when you got to  
9 Johns-Manville, did you make a determination to do  
10 anything to institute any programs with respect to  
11 asbestos, cigarette smoking, and the health of  
12 employees?

13 MS. TEDDER: Objection, form.

14 A. I made it very, very plain to  
15 Johns-Manville when I came that the data  
16 associated -- the enhanced risk, the joint effect of  
17 cigarettes and asbestos, and also made it very, very  
18 plain that in the absence of some efforts, some  
19 recognition of this fact, it would to a degree  
20 interfere with the successful accomplishment of what  
21 my goals were.

22 Q. Doctor, I'm going to hand you Exhibit 2,  
23 and also counsel Exhibit 2.

24 (Exhibit 2 marked.)

page 25

page 26

1 A. Yes, sir.

2 Q. Can you tell me the general nature of  
3 Kotin Exhibit 2?

4 A. Yes. What I did was explain to the senior  
5 staff at Johns-Manville that by virtue of the  
6 recognized association -- relationship between  
7 cigarette smoking and asbestos exposure in terms of  
8 risk to lung cancer, it would -- the corporation  
9 would have the responsibility of doing whatever it  
10 can to reduce the risk from all causes and most  
11 especially in relation to lung cancer, cigarette  
12 smoke.

13 Q. Doctor, can you, just in your own words --  
14 and I know it's been 25 years -- but I take it this  
15 was a matter that you felt very strongly about.  
16 First, can I ask you that, did you feel strongly  
17 about this program that you suggested to senior  
18 management at Johns-Manville in the mid-1970s?

19 MS. TEDDER: Objection, form.

20 A. Yes, sir, I did.

21 Q. And can you just describe in your own  
22 words, sir -- and I have some documents I can show  
23 you if you need dates. The dates aren't important,  
24 because the documents give us the dates. But just

page 26

page 27

1 generally what were the steps that you recommended  
2 be undertaken by Johns-Manville, if any, with  
3 respect to the effects -- interrelationship of  
4 cigarette smoke aerosols and asbestos fibers.

5 MS. TEDDER: Objection, lack of  
6 foundation.

7 A. My position then, my position now, is that  
8 cigarette smoking is so overwhelmingly the major  
9 determinant of the risk to lung cancer in cigarette  
10 smokers, as indeed it is for the general population,  
11 that some mechanism had to be found for eliminating  
12 smoking in the workplace.

13 Q. Where asbestos was involved?  
14 A. Where asbestos was involved. Being new in  
15 corporate America at the time, no experience, I  
16 recognized that no situation is really ever solved  
17 in and of itself without consideration of the ripple  
18 effect, if you want to call it that, and I made that  
19 plain, that this generates some problems, both  
20 because of its newness, both because it involved a  
21 series of social issues and so on, and also involved  
22 some corporate issues.

23 But nevertheless, I said that there must  
24 be a way that we can accomplish what is my

page 27

page 28

1 responsibility, and that is reducing the risk to,  
2 among other things, lung cancer by workers exposed  
3 to asbestos in their occupations.

4 Q. And, sir, is Kotin Exhibit 2 on the second  
5 page a listing of some sort?

6 A. Yes, sir.

7 Q. And what is the nature of that listing?

8 A. It was sort of an initial blueprint of how  
9 I felt -- the implementation of the effort to reduce  
10 the risk to lung cancer in the workers.

11 Q. Doctor, after these recommendations were  
12 made, do you recall whether Johns-Manville, under  
13 your tenure as executive -- or, excuse me, senior  
14 vice president, involved itself in the creation of a  
15 program directed at its workers, its employees, with  
16 respect to asbestos and cigarette smoke?

17 A. Yes, sir.

18 MS. TEDDER: Objection, form.

19 Q. Would you describe that program with  
20 respect to the interrelationship of cigarette  
21 smoking and asbestos fibers insofar as you were  
22 involved, yourself, directly, as the man in the  
23 field, if you will, to help assist those workers  
24 avoid those risks?

page 28

page 29

1 A. Well, I think the first step was to verify  
2 and convince the workers themselves that this was a  
3 real issue, not one for which there was no  
4 scientific support. And this was accomplished over  
5 a period of time, of course, with an educational  
6 program for the workers.

7 Q. And just generally, Doctor, the  
8 educational program, were you personally involved in  
9 that?

10 A. I set up the program. I was one of the  
11 staff, as it were, of lecturers that went from plant  
12 to plant, shift to shift, and gave these programs.  
13 And the education team consisted of world-recognized  
14 chest physicians, clinicians, internists and so on,  
15 who were just not sitting behind a desk, as in an  
16 office or a corporation, but were practicing daily  
17 and were world-recognized consultants.

18 We -- I have said it before. I guess I  
19 can repeat it. Having been a professor for 40  
20 years, those workers knew or were exposed -- and it  
21 was sobering to see how wonderfully they were  
22 educated. They knew as much as an average sophomore  
23 in medical school about this issue that we were

24 talking about.

page 29

page 30

1 Q. They became that level of sophistication  
2 after the program?

3 A. Yes, sir. I believe that.  
4 (Exhibit 3 marked.)

5 Q. This is Dr. Kotin Exhibit 3. Doctor, have  
6 you familiarized yourself with this series of  
7 documents here?

8 A. Yes, sir.

9 Q. And just generally what does this Exhibit  
10 3 represent?

11 MS. TEDDER: Objection, lack of  
12 foundation.

13 A. The --

14 Q. Well, were you involved in Kotin Exhibit  
15 3, this, sir?

16 A. Mightily.

17 Q. And what do you mean by mightily?

18 A. Essentially, I was responsible for the  
19 preparation of the document, not that I wrote it,  
20 but getting the appropriate persons involved.

21 Q. Right.

22 A. So we could come up with a document that  
23 is self-explanatory in its title. No-smoking  
24 program.

page 30

page 31

1 Q. Now, does this Exhibit 3 describe the  
2 Johns-Manville smoking ban program as you recall it,  
3 sir?

4 A. As I recall it, yes.

5 Q. Can you, without reference to the  
6 document, just give the jury and the Court some  
7 understanding of the types of different components  
8 of this Johns-Manville smoking program?

9 A. Yes. As I say, the components would begin  
10 with what I referred to a moment ago, the education  
11 program. Then it offered recognition to the more or  
12 less universally recognized problem of the  
13 difficulties associated with stopping smoking. It  
14 addressed those.

15 And in recognition of that, the company  
16 incorporated into the program a mechanism for  
17 financing what was then recognized as one of the  
18 better smoke-ending programs, getting people to kick  
19 the habit, as it were. In fact, the name was  
20 Smoke-Enders.

21 Q. Smoke-Enders?

22 A. Yes, sir. And we agreed to do it not only  
23 for the employees, but for their spouses,  
24 recognizing that there has to be mutual

page 31

page 32

1 reinforcement within a family for anything that  
2 represented a change in behavior.

3 And I guess we then made available to  
4 workers on a demand basis the willingness of the  
5 medical personnel, whether employed by Manville or  
6 operating under contract as plant physicians, to  
7 answer questions. In other words, anything that  
8 came up, "Please go and see if you can't be helped

9 by some professional."

10 Q. Now, Doctor, at some point in time in  
11 Johns-Manville's efforts to implement the smoking  
12 ban program, did you face some opposition?

13 MS. TEDDER: Objection, form.

14 Q. Well, let me put it this way. And you use  
15 your own words. How was your program greeted?

16 A. Everybody, I think, is interested in their  
17 own health and well-being, so I have to sort of give  
18 you two answers. The one is the workers themselves.  
19 It would be foolish to assume there was no griping.  
20 Of course there was griping. But it was griping  
21 that was sort of moderated by their recognition that  
22 it's the workers' well-being.

23 In the union, management, and the  
24 officership, as it were, of the union, there were  
page 32

page 33

1 some questions, and I think it's important to  
2 emphasize, sir, that the questions were never  
3 related to health, the authenticity of our position,  
4 the reality of what we were trying to accomplish.  
5 They were related to -- insofar as union leadership  
6 was concerned, to the world of collective  
7 bargaining, which was entirely out of my province.

8 So that's where the opposition primarily  
9 was. Almost exclusively, but not exclusively. Of  
10 course, there were gripers, and hell-no's, if you  
11 would.

12 Q. Doctor, if you would, these pages aren't  
13 numbered on my copy, but if you would turn about  
14 seven pages in, you'll have to count them.

15 A. What does the top of the page say?

16 Q. "As a consequence." That may be it,  
17 there.

18 A. I have it, sir.

19 Q. Okay. In the middle of whatever page this  
20 is, Kotin Exhibit 3, but it starts off, "As a  
21 consequence of Johns-Manville's concern"?

22 A. Yes, sir.

23 Q. Then it ends -- the last sentence ends  
24 with, "Since then we have visited six locations."

page 33

page 34

1 But in the middle of it, sir, if you would take just  
2 a moment to read that to yourself, the paragraph  
3 beginning, "In 1976."

4 A. Yes, sir.

5 Q. Can you tell me, sir, if that fairly  
6 summarizes what you recall of the history of -- or  
7 at least in part, of the efforts by Johns-Manville  
8 to impose the smoking ban?

9 A. Yes, sir.

10 Q. Would you like to take a break?

11 A. I would.

12 Q. Okay.

13 (A discussion was held off the record.)

14 Q. Dr. Kotin, we were last asking you about  
15 Exhibit 3 --

16 A. Yes, sir.

17 Q. -- that you have before you, and I would  
18 ask you please, sir, to look at the paragraph  
19 beginning, "In 1976." I want to read this you and I

20 have a question about it. In 19 --  
21 MS. TEDDER: Objection. I'd like to make  
22 an objection to the extent the document speaks  
23 for itself.  
24 Q. "In 1976, a decision was made to implement

page 34

page 35

1 an elimination of smoking at two asbestos-using  
2 locations, one in Texas and the other in  
3 Massachusetts. Because of the urgency, Dr. Paul  
4 Kotin gave a presentation at each location and the  
5 no-smoking program was instituted."

6 Now, my question is, sir, do you recall  
7 the nature of the urgency that caused you to go to  
8 Texas and Massachusetts to make a presentation?

9 A. The urgency was intrinsic to the problem.  
10 The sooner the program was started, the sooner the  
11 beneficial effect would become real.

12 Q. The next paragraph reads, sir, "At each  
13 location, there was a violation of the rule followed  
14 by a disciplinary action, the union filing a  
15 grievance and arbitration."

16 Now, Dr. Kotin, do you have personal  
17 knowledge of what's related in this particular  
18 sentence?

19 MS. TEDDER: Same objection as to reading  
20 from the document.

21 A. Yes, sir.

22 Q. And in fact, did you testify in the  
23 arbitration?

24 A. Yes, sir.

page 35

page 36

1 Q. Would you please tell me the nature of the  
2 testimony you gave in the arbitration?

3 A. Yes, sir. The testimony was -- emphasized  
4 the reality of the hazard associated with smoking in  
5 persons exposed to asbestos occupationally, and  
6 testimony consisted of -- I don't remember how  
7 many -- but citations from the medical and  
8 scientific literature establishing this adverse  
9 smoking effect.

10 Q. Among asbestos workers?

11 A. In asbestos workers.

12 Q. Now, Dr. Kotin, in a similar fashion,  
13 there was an arbitration in Massachusetts; is that  
14 correct?

15 A. Yes, sir.

16 Q. And in Texas, Johns-Manville lost the  
17 arbitration?

18 MS. TEDDER: Objection, leading.

19 A. Yes, sir.

20 Q. And in Massachusetts what happened?

21 MS. TEDDER: Objection.

22 A. The arbitrator held for Johns-Manville.

23 Q. Now, on the next page, sir, the first full  
24 sentence says, "I believe the success of the program

page 36

page 37

1 is due to many factors."

2 Do you share that belief that the program  
3 eventually was successful?

4 A. Yes, sir.

5 Q. Why is that?  
6 A. For several reasons. First of all, the  
7 very nature of the program, the one that was  
8 precedent-setting, one that really had nothing other  
9 than the legitimacy of the position to support it,  
10 rather than a series of precedents.

11 Secondly, it showed that the education of  
12 the workers was preeminently successful in their  
13 accepting the concept of the enhanced risk, and the  
14 willingness of them to go to the smoke-enders  
15 program. The personal contacts made by -- to me  
16 from workers around all indicated -- indicated,  
17 established -- that the workers wanted what we were  
18 trying to do in relation to their health. I think  
19 that's a fair statement.

20 Q. Doctor, in the scientific context, are you  
21 familiar with the word named "synergy"?

22 A. Yes.

23 Q. From a scientific context, generally what  
24 does that mean? What is your understanding of what  
page 37

page 38

1 that means?

2 MS. TEDDER: Objection to the extent this  
3 calls for expert testimony.

4 Q. What is your understanding, sir?

5 A. Synergy represents the result of the  
6 combination of two or more events adding up to more  
7 than just the arithmetic summation, simply. Synergy  
8 means that 2 plus 2 in arithmetic is 4, but if  
9 you're measuring the effect of 2 plus 2 in a  
10 situation of synergy, they add up to 6 or 8 -- those  
11 are figures I'm just picking out --

12 Q. Yes.

13 A. -- but more than just would anticipate a  
14 simple arithmetical addition.

15 Q. In the course of your undertaking to  
16 educate the Johns-Manville workers, do you recall  
17 whether you had any discussion with them about  
18 synergy?

19 A. Yes, sir.

20 Q. And do you recall what you specifically  
21 told them in regard to lung cancer?

22 A. Yes. I told them that cigarette smoking  
23 was not just adding another element in the risk. It  
24 was multiplying the added -- the additional risk.

page 38

page 39

1 And I used some examples, and the concept of  
2 synergy, I believe, was understood.

3 Q. And the other factor would have been what?  
4 You said smoking was one factor.

5 A. Asbestos exposure.

6 Q. Asbestos.

7 A. Asbestos exposure.

8 Q. And specifically lung cancer?

9 A. Lung cancer, yes, sir.

10 Q. Now, at the arbitration hearing, did you  
11 attempt, likewise, to educate the arbitrator about  
12 the concept, as you understood it, of asbestos/  
13 cigarette smoke synergy?

14 A. Yes, sir.

15 Q. Now, Doctor, were you provided some



16 documents by Ms. Dix with respect to a law firm  
17 named Covington and Burley?

18 A. Yes, sir.

19 Q. Generally were you -- would you just  
20 generally describe those documents as you recall  
21 them now? Then I'll give them to you.

22 MS. TEDDER: Objection, lack of  
23 foundation. Also if you're going to refer to  
24 the documents, I'd like to have copies.

page 39

page 40

1 MR. MOTLEY: I didn't say I was, but you  
2 are certainly entitled to have copies. I think  
3 you already do. But you want to give them the  
4 ones -- all these are TI stuff.

5 A. I can't recall. I'd have to look at it.

6 Q. Okay.

7 (Exhibit 4 marked.)

8 Q. Plaintiff's Exhibit 4, Doctor. I want to  
9 ask you if that refreshes your memory as to whether  
10 or not that is a document that Ms. Dix shared with  
11 you.

12 MS. TEDDER: Okay, just wait just a  
13 minute. Do you know whether or not this is a  
14 Bliley document? It is? Just one second.

15 A. Yes, sir.

16 MS. TEDDER: Okay. For purposes of the  
17 record, Mr. Motley, since this is a Bliley  
18 document, I would like to note Defendant's  
19 objection to the use of the document, but --  
20 and also state that we understand that the  
21 Court has entered a Bliley order in this case,  
22 and that limits the use at the deposition and  
23 we want to lodge our continuing objection for  
24 the record to the use of the document.

page 40

page 41

1 MR. MOTLEY: Thank you.

2 Q. Now, Dr. Kotin, at the time from 1976 to  
3 1978 time period, were you aware that lawyers  
4 representing tobacco interests were involving  
5 themselves in any way with the Johns-Manville union  
6 arbitration dispute?

7 MS. TEDDER: Objection. Objection.

8 Q. You can answer the question.

9 MS. TEDDER: Wait a minute. Let me go  
10 ahead and lodge my objection.

11 I object to the form of the question. I  
12 also object to lack of foundation, since  
13 there's no indication the witness has any  
14 personal knowledge or is familiar at all with  
15 the document.

16 Q. Well, that's my whole point, Doctor. Were  
17 you familiar with this document before Ms. Dix  
18 showed it to you in the recent past month?

19 A. No.

20 Q. What was your reaction to seeing these  
21 documents in regard to tobacco interests involving  
22 themselves in Johns-Manville's efforts to effectuate  
23 a no-smoking ban?

24 MS. TEDDER: Objection. Speculation.

page 41

page 42

1 Lack of relevance.  
2 Q. Your personal reaction to learning that  
3 that they had involved themselves in this no-smoking  
4 effort by Johns-Manville.  
5 A. Outrage.  
6 Q. You were outraged? Can you tell me, sir,  
7 why you were outraged?  
8 MS. TEDDER: Same objection. Objection.  
9 Same objection.  
10 (Exhibit 5 marked.)  
11 A. The outrage was predicated first on --  
12 first on the principles of the practice of medicine.  
13 Q. Explain that, sir.  
14 A. That when there is established a modality  
15 for the prevention of disease, the amelioration or  
16 lightening of a disease, or ultimately the cure of a  
17 disease -- to stand in the way of the implementation  
18 of that is outrageous.  
19 Q. Kindly look, sir, at 5.  
20 A. Yes, sir.  
21 Q. And just glance through that.  
22 A. Yes, sir.  
23 Q. Is that one of the documents, Doctor, that  
24 Ms. Dix showed you?

page 42

page 43

1 MR. MOTLEY: And this -- I don't think  
2 this is a Bliley document.  
3 MS. TEDDER: I was just going to ask you  
4 to give me just a second to ask.  
5 MR. MOTLEY: I don't think it is. It may  
6 be. I think it came out of a Temko deposition,  
7 but it may be Bliley also.  
8 MS. TEDDER: To the extent it is, we'll  
9 record our continuing objection.  
10 MS. DIX: That was produced in Falise, for  
11 the record.  
12 Q. Doctor, is number 5 one of the documents  
13 that Ms. Dix provided you that led you to state your  
14 reaction that you had previously stated on the  
15 record?  
16 A. Yes, sir.  
17 Q. This is Dr. Kotin Exhibit 6.  
18 (Exhibit 6 marked.)  
19 A. Yes, sir.  
20 Q. Is that one of the documents that led you  
21 to be outraged?  
22 MS. TEDDER: Objection. Just give me just  
23 a minute, Mr. Motley. We're still trying to  
24 check.

page 43

page 44

1 MR. MOTLEY: I know this is not a Bliley  
2 document. This came from Crowder's files.  
3 MS. TEDDER: This document has a TI up on  
4 it.  
5 MR. MOTLEY: It may be. Produced in  
6 Texas, though, so that --  
7 MS. TEDDER: TI.  
8 MR. MOTLEY: Texas, TX. If you discover  
9 later that it is, you can carry forward with  
10 your objection.  
11 MS. TEDDER: Right. Thank you.

12 MR. MOTLEY: You're welcome.  
13 Q. Doctor, is this another of the documents  
14 that led to your outrage that you have just  
15 described?

16 A. Yes.

17 MS. TEDDER: Objection, lack of  
18 foundation.

19 Q. Now, Doctor -- and I know it's difficult  
20 to go back to 25 years. I find it more difficult  
21 every year. But at the time that this -- your  
22 efforts to help protect your employees of your  
23 company's health were going on, did you have any  
24 idea whatsoever that the tobacco companies were,

page 44

page 45

1 I'll use the word, insinuating themselves into the  
2 dispute between union and the company?

3 MS. TEDDER: Objection. Argumentative.  
4 Relevance.

5 A. No, none.

6 Q. And the first knowledge you had of the  
7 tobacco companies' involvement was sometime in the  
8 year 2000 or 1999?

9 MS. TEDDER: Objection, form.

10 A. Yes, sir.

11 Q. Now, Doctor, you -- and I'm going to go  
12 into this subject in a little more detail later, but  
13 you yourself participated, did you not, with the  
14 tobacco companies' research efforts in regard to  
15 smoking and health?

16 A. Yes, sir.

17 Q. Do you know whether they knew specifically  
18 that you, Paul Kotin, a former member of the  
19 Scientific Advisory Board of the Council for Tobacco  
20 Research was the person who was spearheading the  
21 no-smoking ban to protect your workers?

22 MS. TEDDER: Objection. Speculation.  
23 Leading.

24 A. I assume they did, yes, sir.

page 45

page 46

1 Q. Dr. Kotin, at some point in time did you  
2 participate in decisions of Johns-Manville with  
3 respect to warning labels on Johns-Manville  
4 products?

5 MS. TEDDER: Objection, form.

6 A. Yes, sir.  
7 (Exhibit 7 marked.)

8 MR. MOTLEY: This is 7.

9 A. Yes, sir.

10 Q. This purports to be from you to Mr. J.A.  
11 McKinney. Do you recall who Mr. McKinney is?

12 A. Yes, he was the chief executive officer of  
13 Johns-Manville Corporation.

14 Q. And does this document refresh your  
15 recollection that in March of 1977 you communicated  
16 with Mr. McKinney?

17 A. Yes, sir.

18 Q. And generally, would you tell us why you  
19 made the recommendation that the Johns-Manville  
20 warning label be changed?

21 A. Because the exposure, occupational  
22 exposure, to asbestos was not limited to the

23 Johns-Manville Corporation alone, but to the  
24 purchasers of asbestos for whatever industrial use

page 46

page 47

1 they may want. And again -- and the only principles  
2 of medicine I felt we were duty bound to warn  
3 anybody who was exposed to asbestos who would have  
4 that risk to asbestos enhanced by smoking.

5 Q. Now, Doctor, from the time you joined  
6 Johns-Manville in 1974 --

7 A. Yes, sir.

8 Q. -- to the time you retired from  
9 Johns-Manville, in 1981, as we have defined the term  
10 "retired," since you still are active --

11 A. Yes.

12 Q. -- did you ever receive a communication  
13 from any tobacco industry scientist or consultant  
14 describing to you their views of the  
15 interrelationship, if any, between cigarette smoking  
16 and asbestos fibers?

17 MS. TEDDER: Objection, leading.

18 A. I don't recall.

19 Q. You don't recall any of them calling you  
20 or writing you or telling you about anything they  
21 may have been doing?

22 MS. TEDDER: Objection, form.

23 A. Specifically -- well, let me put it this  
24 way. Did I have interrelationships, intercourse,

page 47

page 48

1 with scientists, regardless of who their employers  
2 with? Yes. We belong to the same organizations.  
3 So I certainly talked with them.

4 But do I recall any formal things along  
5 the line you say? Specific calls? Specifically,  
6 not at all.

7 Q. Okay. Now, the warning label that you  
8 recommended to Mr. McKinney includes the language  
9 that smoking will increase the risk of serious  
10 bodily harm.

11 Do you know of your own personal  
12 knowledge, sir, whether that warning was, in fact,  
13 subsequent to that date, at some time attached to  
14 those bags?

15 A. On certain products, yes, sir.

16 Q. Doctor, I don't know if you want to take  
17 another break, but I'm getting ready to go to  
18 another section.

19 A. Let's go to another section.

20 MR. MOTLEY: I'm not going to take up all  
21 my time.

22 (A discussion was held off the record.)

23 A. Thank you.

24 MR. BYASSEE: We'll be good for another 10

page 48

page 49

1 to 15 minutes.

2 MR. MOTLEY: That's good. That's good.

3 (Exhibit 8 marked.)

4 MR. MOTLEY: This will be Kotin Exhibit  
5 number 8, I believe, if memory serves me.

6 A. Yes, sir.

7 Q. Dr. Kotin, I know you have given many

8 presentations in your career. But I ask you, this  
9 was a period of time when you were senior vice  
10 president of Johns-Manville, and it says that in  
11 1977 that you made a presentation before the  
12 National Commission on Smoking and Public Policy.  
13 Do you generally recall that?

14 A. Yes, sir.

15 Q. Do you recall this particular paper?

16 A. Yes, sir.

17 Q. And does this paper set forth your beliefs  
18 as of the time they were written in regard to  
19 cigarette smoking?

20 A. Yes, sir.

21 Q. Okay. And let me ask you, sir, you cite  
22 in here that the American Cancer Society was  
23 motivated to take this action, referring back to  
24 regional meetings, to discuss cigarette smoking,

page 49

page 50

1 because, you quote, "cigarette smoking remains the  
2 largest single unnecessary and preventible cause of  
3 illness and early death."

4 MS. TEDDER: Mr. Motley, are you reading  
5 from the middle of page 1, for the record?

6 MR. MOTLEY: Yes, I am.

7 MS. TEDDER: Thank you.

8 Q. Do you recall that the American Cancer  
9 Society made that statement?

10 A. Yes.

11 MS. TEDDER: Objection, leading. The  
12 document speaks for itself.

13 Q. And sir, was that your belief in 1977 as  
14 senior vice president of Johns-Manville?

15 MS. TEDDER: Objection, form.

16 A. Yes, sir.

17 Q. And the line at the bottom, the last  
18 line -- the last paragraph, I mean -- "Cigarette  
19 manufacture, distribution, and sale, along with  
20 universal consumer availability and use, constitutes  
21 the most pervasive human scourge known to man, as  
22 measured by morbidity and mortality, including the  
23 accumulated toll of wars through the centuries."

24 Were those your words, sir?

page 50

page 51

1 A. Yes, sir.

2 MS. TEDDER: Objection, leading. The  
3 document speaks for itself.

4 Q. Those were your words?

5 A. Yes, sir.

6 Q. And can you tell us why you -- pretty  
7 strong words, you'd agree?

8 MS. TEDDER: Objection, form.

9 A. Yes, sir.

10 Q. Why did you believe that?

11 A. Well, I believed it because the data, the  
12 epidemiologic data, from the various nations of the  
13 world, as well as from the World Health  
14 Organization, have provided the numbers to support  
15 this statement that -- I would emphasize that the  
16 pervasiveness is the key word here. As I say,  
17 including wars. It didn't involve soldiers for war  
18 or in wars. It didn't involve any isolated

19 restricted age group. It involved the population  
20 beginning with the age of smoking, and it varied  
21 from country to country, to the death of a person  
22 and then stopping smoking.

23 So I think that epidemiological data, the  
24 physiologic and pathological data, the numbers as  
page 51

page 52

1 well as the science would be a simple way of putting  
2 it, support this statement at the time and at this  
3 time as well, sir.

4 Q. Today?

5 A. Yes, sir.

6 Q. Doctor, on page 2 of your presentation to  
7 the American Cancer -- or the National Commission --

8 A. It was the National Commission.

9 Q. Yes, sir. You write, "The negative impact  
10 of cigarette smoking is manifest in virtually every  
11 sphere of human activity."

12 And then I wanted to focus on -- you list  
13 several, and one is corporate responsibility in that  
14 paragraph.

15 A. Yes, sir.

16 Q. What did you mean by that?

17 A. I mean that where it can be responsibly  
18 demonstrated, authentically verified that smoking  
19 adds to any potential hazards associated with  
20 occupational exposure, it should be treated the same  
21 as the other potential hazards: Reduction,  
22 elimination. In other words, preventive medicine,  
23 which is another name for occupational medicine.

24 Q. Okay. On page 3, sir, under D, you write,  
page 52

page 53

1 "The chronic diseases and cancers causally  
2 associated with cigarette smoking all become  
3 manifest after very long latent periods, measurable  
4 in significant minutes of the life span. This  
5 diabolical characteristic provides a false sense of  
6 security from both a health-and-well-being  
7 viewpoint, to say nothing of compounding the  
8 difficulties in the health education of smokers."

9 What did you base that statement on, that  
10 belief of yours?

11 MS. TEDDER: Objection to the extent it  
12 calls for expert testimony.

13 A. Because the most universal comment to me  
14 was: Here I have been smoking for a period of  
15 years, and I feel all right. And this is  
16 characteristic of all latent diseases. From the  
17 period of the onset of exposure to the manifestation  
18 of disease, whatever it is, you feel all right until  
19 the manifestation.

20 In fact, I recall one worker telling me,  
21 "It can't be all that bad, Doc. We won the  
22 corporate bowling league. We're in great shape."

23 MS. TEDDER: I move to strike to the  
24 extent it's hearsay.

page 53

page 54

1 Q. Doctor, is that part of the background of  
2 information which caused you to make the statement  
3 that you did about the false sense of security?

4 A. Yes, sir.  
5 Q. Now, on paragraph F, sir, "Cigarette  
6 smoking has an unparalleled," the last sentence,  
7 "effect in facilitating and enhancing the toxic  
8 effect and manifestations of disease associated with  
9 other environmental agents."  
10 And then you go down and you list  
11 examples, including asbestos. Now, you then  
12 conclude by saying, "Lung cancer in these  
13 occupational groups would virtually disappear as a  
14 hazard of the workplace. Cigarette smoking is in  
15 reality the determinant for most of these cancers,  
16 as well as for an array of lung abnormalities  
17 grouped under the generic term 'chronic obstructive  
18 pulmonary disease.'"  
19 Doctor, what did you intend to impart in  
20 setting down in writing your belief?  
21 MS. TEDDER: Objection, the document  
22 speaks for itself. Also object to the extent  
23 it calls for expert testimony.  
24 Q. Go ahead. You can answer.

page 54

page 55

1 A. Stated simply, I wanted to make known the  
2 principle that cigarette smoking can convert a  
3 harmless exposure to an agent to a harmful enhanced  
4 risk exposure.  
5 Q. Including asbestos?  
6 A. Including the asbestos.  
7 Q. Under number 3, Roman numeral 3, corporate  
8 responsibility, you make reference to "Cigarette  
9 advertising represents the most flagrant  
10 circumvention of the currently existing 'truth in  
11 advertising' maxim. The positive emphasis on  
12 gratification," that's in quotes, as is 'truth in  
13 advertising,' "and, as mentioned, the cavalier  
14 unconcern over ill health unite to create a  
15 situation analogous to failure to pasteurize milk,  
16 chlorinate water, or sterilize" --  
17 A. Parenteral medication.  
18 Q. -- "parenteral medication."  
19 Now, what did you mean to impart in that  
20 language?  
21 MS. TEDDER: Objection, calls for  
22 speculation on the part of the witness. Also  
23 object to the extent he's been offered as some  
24 kind of an expert in advertising.

page 55

page 56

1 Q. Well, you wrote this, didn't you?  
2 A. Yes, sir.  
3 Q. Are you speculating on what you meant?  
4 A. No, sir. I know what I meant.  
5 Q. Okay, well, tell us what you meant.  
6 A. What I meant was -- and I used this again  
7 and again -- is: Pretend that we do not have  
8 pasteurized milk, chlorinated water, or when you  
9 were in the hospital and you needed to get some  
10 intravenous solutions, they were not sterile. That  
11 would be -- these three are classical examples of  
12 preventive medicine, saving the lives of infinite  
13 numbers of people.  
14 Q. Now, Doctor, I would like to wrap up, and

15 take the next break with this document, if that's  
16 okay. Are you good to go another five minutes?

17 A. Oh, easily, thank you. Not five more,  
18 but...

19 Q. Okay. Now, Doctor, are you familiar with  
20 something that's been in the lay press since 1998  
21 called the master settlement agreement between  
22 cigarette companies and certain attorneys general of  
23 various states, including New Mexico?

24 MS. TEDDER: Objection.

page 56

page 57

1 A. Only to the extent that the reading of a  
2 paper --

3 MR. MOTLEY: Right.

4 A. -- yes, would tell me, yes, sir.

5 Q. Now, on page 6 -- excuse me, on page 5,  
6 Roman numeral 5, you set forth approaches to  
7 solution of the problem. Are these approaches of  
8 your own that you were recommending?

9 A. They're -- yes. Approaches in the sense  
10 of what I believe, not that I had the power to  
11 implement them.

12 Q. Right. Right. I understand. These were  
13 your beliefs?

14 A. Yes, sir.

15 Q. Do you recall if any representatives of  
16 tobacco companies were at this meeting in Denver  
17 when you made this presentation?

18 MS. TEDDER: Objection, relevance.

19 A. I can't recall.

20 Q. Was it a well-attended meeting?

21 A. Very well-attended, because it was a  
22 national commission, and the commission itself was  
23 made up of a veritable Who's Who of people in the  
24 field of preventive medicine and public health.

page 57

page 58

1 Q. Now, on page 6, one of the controls or  
2 solutions that you recommend is public health costs  
3 and socioeconomic restitution. And then you set  
4 forth different proposals that you would make to --  
5 and I wanted to ask you, under number B, you said  
6 there should be an informative warning given.

7 A. Yes.

8 Q. Specific as to certain diseases. Do you  
9 recall that?

10 A. Yes, sir.

11 MS. TEDDER: Objection, mischaracterizes  
12 the document.

13 Q. Would you tell the Court what you meant by  
14 an informative warning?

15 A. A warning that would be clearly understood  
16 by the person and would be sufficiently unabstract  
17 so that it would have immediate meaning and -- well,  
18 I guess that's where I am.

19 Q. And you give some examples.

20 A. Exactly.

21 Q. Okay. Now, you state under 2A, "Corporate  
22 legal responsibility must be established for  
23 cigarette and associated disease in a manner  
24 identical to the responsibility for workers'

page 58



page 59

1 compensation for occupational determined diseases.  
2 After all, the manufacturer is profiting from the  
3 hazardous agent and in the best traditions of our  
4 free enterprise system, this privilege should be  
5 balanced with responsibility."

6 Now, what were you suggesting to the  
7 National Commission in making that statement, sir?

8 A. I was recommending that the extent of the  
9 hazard could be measured, could be quantified. And  
10 that, just as in other products, whether it's an  
11 automobile, whatever it is, the company assumes  
12 responsibility for reduction or elimination of  
13 hazard, to the extent that technology allows in all  
14 of the things we buy. The same should be applied to  
15 the tobacco industry.

16 Q. Now, Doctor, would it be fair to say that  
17 you devoted -- well, let me ask you this. What -- I  
18 know it's hard to percentage anything. But if you  
19 look back on your long career, what percent of your  
20 time and effort as a professional has been in the  
21 issues related to preventive medicine, preventing  
22 disease in human beings?

23 A. Beginning from the time that I became a  
24 physician?

page 59

page 60

1 Q. Yes, sir.

2 MS. TEDDER: Objection, relevance.

3 A. 90 percent would not be an overstatement.

4 Q. And you have published on that issue?

5 A. Yes, sir.

6 Q. Now, in your experience over this long  
7 period of time dealing with issues of public health  
8 and preventive medicine, have you ever encountered a  
9 situation where one industry tried to influence  
10 another industry's efforts to protect the health of  
11 their workers?

12 MS. TEDDER: Objection. Lack of  
13 foundation, argumentative.

14 A. Never.

15 Q. Never heard of it?

16 A. No, sir.

17 MR. MOTLEY: Is this a good place to take  
18 a break?

19 MR. BYASSEE: Yes. Timing is about right.

20 MR. MOTLEY: I have to collect my papers.  
21 I have only got about 20 more minutes. I'm  
22 going to reserve 15 to 20 minutes tomorrow in  
23 case I need it for redirect or whatever it is.

24 (A discussion was held off the record.)

page 60

page 61

1 Q. Dr. Kotin, I would now like to turn to a  
2 different subject matter, if I might. The Tobacco  
3 Industry Research Committee, later known as the  
4 Council for Tobacco Research, is the area I want to  
5 talk to you about.

6 A. Yes, sir.

7 Q. Did you become a member of the Scientific  
8 Advisory Board of the -- do you mind if I call it  
9 CTR? Because that's been its name for --

10 A. Okay, fine.

11 Q. But the CTR, in some period of time in the  
12 1950s?

13 MS. TEDDER: Objection, form.

14 A. Yes, sir.

15 Q. You did? And could you tell us the  
16 circumstances under which -- did you go to them, or  
17 did you read about it, or did somebody come to you  
18 and invite you to join, or how did that come about?

19 A. No, I was invited to join. I was at the  
20 University of Southern California at the time, and I  
21 got a call, would I be willing to meet with two  
22 gentlemen who were with the tobacco industry. The  
23 name of one was Mr. Parker McComas, who was the  
24 chairman of the board of Philip Morris, I recall. I

page 61

page 62

1 cannot recall the name of the other person. Well, I  
2 just don't recall. Because Mr. McComas really did  
3 all the talking.

4 Q. And did they really -- Mr. McComas explain  
5 to you why it was -- I take it he sought you out?

6 A. Yes, sir.

7 Q. Did he tell you why?

8 MS. TEDDER: Objection, to the extent it  
9 calls for hearsay.

10 Q. Mr. McComas was an official of Philip  
11 Morris?

12 A. Chairman of the board, I recall.

13 Q. Go ahead.

14 MS. TEDDER: Same objection.

15 A. They came, they said, because, first of  
16 all, I was working in the field of causation of lung  
17 diseases, particular emphasis on lung cancer.  
18 Secondly, it was a combination of experimental  
19 work -- the mice, the rats, the experimental  
20 animals, as well as clinical work. I had  
21 responsibility for a ward, along with an associate,  
22 at Los Angeles County Hospital, which was the  
23 teaching institution of the University of Southern  
24 California. And in developing the science advisory

page 62

page 63

1 board, they wanted to have, to the maximum extent  
2 possible, all relevant disciplines included, and  
3 therefore, they came to me.

4 Q. In the mid-1950s, when you were  
5 approached, had you familiarized yourself with the  
6 existing body of information relating to smoking and  
7 lung cancer?

8 MS. TEDDER: Objection. Vague and  
9 ambiguous. Leading.

10 A. It was my life's blood, yes, sir.

11 MS. TEDDER: Could you wait for me,  
12 Mr. Kotin?

13 Leading. Thank you.

14 Q. Was that question vague and ambiguous to  
15 you, sir?

16 A. Not at all. It was my --

17 MS. TEDDER: The time period is vague and  
18 ambiguous.

19 Q. I said mid-50s.

20 MS. TEDDER: If he knows, he can give you  
21 an exact time.

22 Q. When did they approach you; do you  
23 remember?

24 A. The exact date, I do not remember.

page 63

page 64

1 MS. TEDDER: Do you remember the year?

2 A. 1953 or early 1954. It was within that  
3 several-months span.

4 Q. And so you say that the study of lung  
5 disease, particularly cancer, and you have already  
6 described the air pollution studies you did, and the  
7 aerosol work you did. Had you -- and you said it  
8 was your life's blood. The study of these subjects.  
9 So had you, in the mid-1950s, formed any views about  
10 whether cigarette smoke aerosol caused any disease  
11 in human lungs?

12 MS. TEDDER: Objection, leading. Also  
13 object to the extent it calls for expert  
14 testimony, for which this witness hasn't been  
15 qualified.

16 A. Yes, sir.

17 Q. And what were those views, as best you can  
18 recollect, going back 45 years?

19 MS. TEDDER: Same objection. Lack of  
20 foundation. Calls for expert testimony. And  
21 he's not been qualified as an expert in this  
22 case.

23 A. Well, first, the epidemiological studies,  
24 both in the United Kingdom and the United States,

page 64

page 65

1 would show this.

2 Equally important was my own research,  
3 which demonstrated that cigarette smoke was the most  
4 potent destroyer of lung defenses through any  
5 environmental agents.

6 So that I had the combination of the  
7 numbers from the epidemiologists -- that's not my  
8 field -- but the basic biology -- which is my field.  
9 And these two added up to clearly establishing a  
10 role for cigarette smoke as part of the spectrum of  
11 causes of lung cancer.

12 Q. Doctor, prior to your accepting your  
13 appointment on the Scientific Advisory Board, were  
14 you led to believe by Mr. McComas what the nature of  
15 your role would be?

16 MS. TEDDER: Objection, leading. Also  
17 object to the extent it calls for hearsay.

18 A. Yes, I was to be one member of this  
19 multidisciplinary board, and in view of my  
20 involvement with the area of causes of lung cancer  
21 and chest diseases, more generally, that I would  
22 provide that section, that wedge of the pie, as it  
23 were, relating to the causation of lung cancer and  
24 lung diseases and any possible role for cigarette

page 65

page 66

1 smoking in their causation or risk.

2 Q. Within the context of the CTR SAB?

3 A. Yes, sir.

4 Q. The original members of the Scientific  
5 Advisory Board -- do you recall some of their names?

6 A. Virtually all.

7 Q. And did you find in the early years your  
8 work with the SAB was professionally satisfying to  
9 you?

10 MS. TEDDER: Objection, leading.

11 A. Yes, sir.

12 Q. And how long did you -- we've got records  
13 from CTR, but do you recall when you left your  
14 membership on the Scientific Advisory Board?

15 A. It would have been after I went -- 1964.

16 Q. 1964?

17 A. I think so. The record can verify that.

18 Q. Right. So you served on it for a decade  
19 or so.

20 A. Yes, sir.

21 Q. Did you attend many SAB meetings?

22 MS. TEDDER: Objection, form.

23 A. Yes, sir.

24 Q. When you were serving on the Scientific

page 66

page 67

1 Advisory Board and attending these meetings, did you  
2 observe the role of any industry lawyers in trying  
3 to influence what was going on with the Scientific  
4 Advisory Board?

5 MS. TEDDER: Objection, assumes facts not  
6 in evidence. Also argumentative. Irrelevance.

7 A. At times were industry attorneys present?  
8 Yes. I do not recall specific efforts directed at  
9 me personally by the attorneys.

10 Q. Why did you make the decision to resign or  
11 leave your appointment with the Scientific Advisory  
12 Board?

13 A. Well, there were several elements in that.  
14 First, when I went to work for the government, an  
15 obvious question that I had through my boss,  
16 Dr. Kenneth Endicott, who was the director of the  
17 National Cancer Institute -- that I leave my  
18 continuation-on-the-board decision to him. I hadn't  
19 worked for the government before, and his response  
20 was, "I don't think you should resign, because it is  
21 a science advisory board, and the research being  
22 done could be germane to our mission on the National  
23 Cancer Institute."

24 So I stayed on until such a time as some

page 67

page 68

1 developments made it clear to me that while the  
2 mission of the board might not have been changed,  
3 its implementation had seriously changed.

4 Q. In what way, sir?

5 A. Well, specifically, the understanding of  
6 the SAB when it was formed was that the monies that  
7 the tobacco industry dedicated to research would be  
8 subject to scientific scrutiny and evaluation and  
9 ultimate judgment as to whether it should be funded  
10 after the model of the study sections of the  
11 National Institutes of Health or the advisory  
12 committees of the American Cancer Society or the  
13 Polio Foundation, any scientists acting as referees.

14 Q. Right.

15 A. I learned -- because, again, the  
16 scientific community is, if not cohesive, at least a  
17 demarcated one -- that research was being funded by

18 the -- with industry monies by routes other than  
19 going through the protocol of having the Scientific  
20 Advisory Board scientifically judge them as to their  
21 merit and the appropriateness for their support.

22 Q. Do you recall which routes were deviating  
23 from what you understood CTR was to do?

24 MS. TEDDER: Objection to the extent it

page 68

page 69

1 calls for hearsay testimony.

2 A. Yes. I had instances of meetings where I  
3 was told, in response to a question, that indeed  
4 their contact with the industry for the procurement  
5 of funds subsequent to submitting applications, and  
6 perhaps even more disturbing to me, the going out  
7 and requesting the submission of grants, of  
8 applications for grants. And I felt this  
9 circumvented the original foundation for the SAB, at  
10 least for my membership in the SAB. So that  
11 disturbed me.

12 Further, I felt that the incompatibility  
13 between science and the economics of tobacco, the  
14 whole ball of wax, the advertising, et cetera, et  
15 cetera, was to the point where there was no way that  
16 a bridge between the two could effectively be  
17 maintained.

18 Q. Doctor, with respect to the different  
19 routes of funding that you just described to us, was  
20 that consistent or inconsistent with the original  
21 promises that Mr. McComas of Philip Morris made to  
22 you?

23 MS. TEDDER: Objection, form.

24 A. Inconsistent, sir.

page 69

page 70

1 Q. Were you aware of something called the  
2 special projects while you were with the SAB?

3 A. No, sir.

4 Q. Have you ever heard of something called  
5 the lawyers' special projects?

6 A. No, sir.

7 Q. What about special accounts 4 and 5  
8 maintained by a lawyer named Ed Jacob?

9 MS. TEDDER: Objection, form.

10 A. No, sir.

11 Q. What about the litigation services  
12 incorporated or LSI?

13 MS. TEDDER: Same objection, form.

14 Q. Have you ever heard of that?

15 A. No, sir.

16 Q. What about triple I? Have you ever heard  
17 of that, Information Retrieval Service, or anything  
18 like that? Did you ever hear of that?

19 A. No, sir.

20 MS. TEDDER: Objection, leading.

21 Q. While you were there, was there any effort  
22 by lawyers to prescreen grant applications before  
23 they went to the Scientific Advisory Board?

24 MS. TEDDER: Objection, leading,

page 70

page 71

1 argumentative. Assumes facts not in evidence.

2 A. Not that I'm aware of.

3 (Exhibit 9 marked.)  
4 Q. Dr. Kotin, this is Plaintiff's Exhibit 9.  
5 MS. TEDDER: This I do believe is a Bliley  
6 document.  
7 MR. MOTLEY: I believe it is.  
8 MS. TEDDER: So for the record, we'll  
9 assert our continuing objection.  
10 MR. MOTLEY: Right.  
11 Q. Doctor, I have asked you earlier in regard  
12 to some documents that Ms. Dix shared with you over  
13 the course of the last several months, and just  
14 looking at that for a moment, can you tell me  
15 whether or not this is one of the ones that she  
16 showed you?  
17 MS. TEDDER: Objection, lack of  
18 foundation. But just for the record,  
19 Mr. Motley, can we identify what this document  
20 is?  
21 MR. MOTLEY: It's Kotin Exhibit 9. It  
22 bears Minnesota Trial Exhibit Number 26221. It  
23 purports to be a memo from certain RJR  
24 attorneys to certain other persons identified

page 71

page 72

1 in the kind of the middle center left.  
2 MS. TEDDER: Thank you.  
3 Q. Particularly calling your attention,  
4 Dr. Kotin, to page 10, part B, disaffected SAB  
5 members.  
6 A. Yes, sir.  
7 Q. Do you -- looking at this, do you see your  
8 name mentioned?  
9 A. Yes, sir.  
10 Q. And had you seen that document prior to  
11 the time that Ms. Dix showed it to you?  
12 A. No.  
13 MS. TEDDER: Objection. I object to  
14 having him testify about this document unless  
15 he has personal knowledge.  
16 Q. You have not seen this document prior to  
17 Ms. Dix showing it to you?  
18 A. No, sir.  
19 Q. Sir, do you have any views as to why you  
20 are identified as a disaffected SAB member  
21 considered to be very dangerous? In particular,  
22 Paul Kotin is viewed as the most dangerous?  
23 MS. TEDDER: Objection, speculation.  
24 Leading.

page 72

page 73

1 A. Well, the disaffection I spoke to a few  
2 moments ago. End-running of the SAB. The wholly  
3 irreconcilable substance of the economics of tobacco  
4 with the science of tobacco and health. I had no  
5 idea I was viewed as dangerous. I suspect that as  
6 the one member of the SAB at the time who was  
7 specifically invited to be on the SAB, because this  
8 was my field, they felt any objections or concerns  
9 or comments -- I might perhaps be a little more to  
10 the point, maybe a little more influential.  
11 I hope I'm not blowing things up, but  
12 basically, yeah, I can see that this is my field and  
13 what I would say would probably be accepted more,

14 but I have no way of knowing that.  
15 Q. Would you look at page 11, sir --  
16 A. Yes, sir.  
17 Q. -- of 9. Exhibit 9.  
18 A. Yes, sir.  
19 Q. It sets out the reasons for the  
20 disaffection weren't made entirely clear. Then  
21 first footnote 7. "Wall," who I'll ask you to  
22 assume was a Philip Morris person, "noted that  
23 internal Philip Morris documents questioned the  
24 'relevance' of CTR research and also questioned

page 73

page 74

1 excessive lawyer involvement. He stated that he  
2 expected similar RJR documents."  
3 Now, were you aware of -- or did anybody  
4 share with you any Philip Morris documents  
5 questioning the relevance of CTR research and  
6 questioning excessive lawyer involvement?  
7 MS. TEDDER: I object to the use of the  
8 document with the witness, since he has already  
9 stated he's got no knowledge, so anything you  
10 ask him requires speculation.  
11 A. No, sir.  
12 MS. TEDDER: Please let me finish,  
13 Dr. Kotin. I let you finish. You let me. It  
14 would be great.  
15 A. I know. I apologize. As one gets a  
16 little older, I guess he feels he has to say it  
17 right away. You don't how long he's going to live.  
18 Q. Doctor, in regard to the CTR and matters  
19 related to asbestos research, do you ever recall  
20 attending a Scientific Advisory Board meeting where  
21 the subject matter of asbestos disease was  
22 discussed?

23 MS. TEDDER: Objection, form.

24 A. Yes, sir.

page 74

page 75

1 Q. Tell us the circumstances of that, sir.  
2 A. Well, one of the members of the Science  
3 Advisory Board was Dr. Kenneth Lynch --  
4 Q. Right.  
5 A. -- who at that time was a professor and  
6 chairman of the Department of Pathology at the  
7 Medical College of South Carolina.  
8 Q. In Charleston.  
9 A. In Charleston. And Dr. Lynch -- I liked  
10 him. It would be arrogant to say he liked me. I  
11 liked him as a pathologist. And I'd known of  
12 Dr. Lynch's work by its publication in the  
13 literature.  
14 And the issue of asbestos was of prime  
15 concern to Dr. Lynch because he and his department  
16 had a research -- part of its broad spectrum  
17 research was in the field of asbestos. And the  
18 issue then of asbestos plus smoking -- smoking in  
19 general, came up many, many times, of course.  
20 Q. Doctor --  
21 (Exhibit 10 marked.)  
22 Q. While she's marking that, does the name  
23 John Kreisher, K-R-E-I-S-H-E-R, have any -- ring a  
24 bell with you, to use a colloquial expression?

page 75

page 76

1 A. No, sir.  
2 MS. TEDDER: Is this a Bliley document, do  
3 you know?  
4 MR. MOTLEY: I honestly do not know, but  
5 if it is and you discover it is, you can carry  
6 the objection forward.  
7 MS. TEDDER: Thank you, Mr. Motley.  
8 MR. MOTLEY: You're welcome.  
9 MS. DIX: Just to clarify, it's on the RJR  
10 docs.  
11 MS. TEDDER: Not Bliley.  
12 Q. Doctor, this is a CTR document dated  
13 December 4, 1970, regarding asbestosis and cigarette  
14 smoking interaction. Do you see that title?  
15 A. Yes, sir.  
16 Q. Had you seen this document prior to  
17 Ms. Dix or even prior to today?  
18 A. No, sir.  
19 Q. Is this subject matter dated December  
20 1970 -- in 1970 was this a matter that you were  
21 professionally interested in?  
22 A. Vitally.  
23 Q. Vitally? And if you take a moment to just  
24 look at this document, you will see a certain

page 76

page 77

1 protocol set forth by Dr. Kreisher, and I'd just ask  
2 you to familiarize yourself with what he apparently  
3 was recommending here.  
4 MS. TEDDER: Just for the record,  
5 Mr. Motley, I object to any testimony from the  
6 witness based on his lack of familiarity with  
7 the document.  
8 A. I have looked at it, yes, sir.  
9 Q. Yes, sir. Now, Dr. Kotin, how would you  
10 generally describe what is being recommended here?  
11 MS. TEDDER: I object again to the witness  
12 testifying about the document since he doesn't  
13 have personal knowledge of it or anything in  
14 it. It calls for speculation on his part.  
15 A. A very superficial and unbelievably  
16 underfunded suggestion.  
17 Q. Suggestion to do what?  
18 A. Do what they were going to do with  
19 appropriation of \$10,000. So I fault it both on the  
20 substance of the protocol as well as in the amount  
21 of money.  
22 Q. Let me ask you a question, Dr. Kotin.  
23 From 1970 on, have you maintained an interest,  
24 including to today, in matters relating to

page 77

page 78

1 asbestosis cigarette smoking and lung cancer?  
2 A. Yes, sir.  
3 Q. From 1971 until today, have you ever seen  
4 a study published in the peer review literature  
5 supported by the Council for Tobacco Research  
6 undertaking animal research such as is recommended  
7 by Dr. Kreisher here?  
8 MS. TEDDER: Objection, leading.  
9 A. I have not, no.



10 Q. You have not?  
11 A. No.  
12 Q. While you were medical director of  
13 Johns-Manville -- excuse me, vice president of  
14 health, safety and environment --  
15 A. Medical director is a good enough title  
16 for anybody.  
17 Q. -- did anybody from CTR or any of the  
18 member companies, Philip Morris or Lorillard, RJ  
19 Reynolds, Brown & Williamson, the American Tobacco  
20 Companies -- did they ever share with you, one  
21 researcher to another, the results of any studies  
22 that may have shed light on the interaction of  
23 asbestos and cigarette smoking in the production of  
24 lung cancer?

page 78

page 79

1 MS. TEDDER: Objection, leading,  
2 relevance.  
3 A. No.  
4 Q. Now, Doctor, finally -- and I'm going to  
5 take a short break. I'm about done here, I want to  
6 show you --  
7 (Exhibit 11 marked.)  
8 MR. MOTLEY: This is a Bliley document.  
9 MS. TEDDER: Thank you. Then we will, for  
10 the record, assert our continuing Bliley  
11 objection.  
12 MR. MOTLEY: And this is part of a Bliley  
13 document which is about three inches in width,  
14 and I don't want to burden the record with the  
15 whole thing.  
16 MS. TEDDER: Is this number 11?  
17 MR. MOTLEY: Yes.  
18 Q. Doctor, did you know while you were  
19 involved in the Council for Tobacco Research a  
20 Ms. Lorraine -- and I don't know if I'm pronouncing  
21 this correctly or not -- "peh-LEES" or "pol-LISE,"  
22 P-O-L-L-I-C-E?  
23 A. No, sir.  
24 Q. Did you know William Hoyt?

page 79

page 80

1 A. Yes, sir.  
2 Q. If you would kindly look at page 144 of  
3 that document.  
4 MS. TEDDER: Just for purposes of the  
5 record, this is 144 to 152 consecutively  
6 numbered; is that right, Mr. Motley?  
7 MR. MOTLEY: Yes.  
8 MS. TEDDER: Thank you.  
9 Q. And it says, "Legal review of grant  
10 applications."  
11 As a foundational question, when you  
12 joined the SAB in the 1950s and all the way up  
13 through the 1960s, were you aware that there was  
14 something called a legal review of grant  
15 application?  
16 A. No, sir.  
17 Q. Would that have been consistent or  
18 inconsistent with what you were promised when you  
19 joined the SAB?  
20 MS. TEDDER: Objection, form,

21 argumentative.  
22 A. Inconsistent.  
23 Q. All right. If you look at this, it says,  
24 "Pursuant to standard procedure at CTR, an

page 80

page 81

1 individual interested in a CTR grant is instructed  
2 to write a brief description of his proposal, the  
3 estimated budget, and the amount of time necessary  
4 for completion of the research. This proposal is  
5 called a case. If distributed to the members of the  
6 executive committee of the SAB for review and  
7 comment, it is assigned a case number. The  
8 executive committee of the SAB will then either  
9 encourage or discourage a formal application."

10 On the next page it says, "The  
11 applications are reviewed semiannually and ranked  
12 according to priority and funds are allocated  
13 accordingly."

14 How does that jibe with the practice when  
15 you were on the SAB?

16 MS. TEDDER: I object to the use of the  
17 document. The witness has no personal  
18 knowledge of the contents.

19 Q. Is that roughly similar?

20 A. Not at all similar.

21 Q. What about this part, the next sentence?

22 "During William Hoyt's presidency, cases were not  
23 automatically assigned a number. All potential  
24 cases went first to Hoyt for review."

page 81

page 82

1 Now, he wasn't a member of the SAB, was  
2 he?

3 A. He was the executive secretary.

4 Q. But he wasn't even a scientist, was he?

5 A. No, sir.

6 Q. "All potential cases went first to Hoyt  
7 for review, and proposals which were considered  
8 dangerous were sent to Jacob, Medinger & Finnegan  
9 for a legal opinion." Were you aware of that?

10 MS. TEDDER: Objection, leading. I also  
11 object to your reading from the document, Mr.  
12 Motley. The witness isn't familiar with it.

13 A. No, sir.

14 MS. TEDDER: Mr. Kotin, if you would let  
15 me finish, I'd appreciate it.

16 THE WITNESS: I'm sorry. I offered a  
17 blanket apology in advance, and I'd be glad  
18 to -- there's no hidden agenda in this.  
19 Believe me.

20 MS. TEDDER: That's great. If you can  
21 remember to wait just a second, then you can  
22 have your opportunity to answer.

23 THE WITNESS: I'm not that smart.

24 MS. TEDDER: I'm sure you are.

page 82

page 83

1 Q. Doctor, if this happened, as is set forth  
2 here in this document, would that be consistent or  
3 inconsistent with the promises made to you about how  
4 CTR would function?

5 MS. TEDDER: Objection, speculation,

6 argumentative and leading.  
7 A. It's totally inconsistent. Emphatically  
8 inconsistent.  
9 Q. Is this consistent or inconsistent with  
10 the publicly stated goals of the CTR --  
11 MS. TEDDER: Same objections.  
12 Q. -- when you were a member?  
13 A. Inconsistent.  
14 MR. MOTLEY: Okay. If we can take a short  
15 break here, it won't be more than three or four  
16 minutes, Doctor. I don't think I have got any  
17 further questions, but -- you don't think so,  
18 either? So we don't need to take a break.  
19 Plaintiff concludes this examination of  
20 Dr. Kotin, reserving a few minutes after  
21 counsel for the defendant exercises their  
22 rights, pursuant to the judge's order, whatever  
23 that might be. I understand there's a dispute  
24 about that, but in any event, we took how much

page 83

page 84

1 time, sir?  
2 MR. BYASSEE: About an hour and 45, almost  
3 an hour and 50 minutes.  
4 MR. MOTLEY: I don't contemplate more than  
5 10 or 15 minutes. So I will yield 30 minutes  
6 of my time to the defendants on the two and a  
7 half, two and a half thing, just reserving 15  
8 of my remaining 45 in the event I ask any --  
9 want to ask any questions at the end. And I  
10 leave it to counsel for Dr. Kotin and counsel  
11 for the defendants as to whether we proceed  
12 now, take a lunch break or whatever the  
13 pleasure of the two of you are. I don't want  
14 to insinuate myself into that decision. That's  
15 up to the two of you.  
16 MR. BYASSEE: Let's take ten.  
17 (A discussion was held off the record.)  
18 MR. BYASSEE: In any event, it's my  
19 understanding at this point that the defendants  
20 are not intending to go forward with the  
21 remainder of today.  
22 Just so we all understand, we have  
23 committed Dr. Kotin to two and a half hours  
24 today and to two and a half hours tomorrow, and

page 84

page 85

1 it makes no difference to Dr. Kotin or myself  
2 who questions during that period of time.  
3 But my understanding of the magistrate's  
4 ruling and the conditions of this particular  
5 deposition was that it would be that total of  
6 five hours, divided into two and a half each,  
7 and however we divide that up I'll leave it to  
8 counsel, because Dr. Kotin and I aren't making  
9 that decision.  
10 MS. TEDDER: I'll just state for the  
11 record that, first of all, I don't think  
12 there's anything in the May 23rd transcript in  
13 front of Judge Gold which limits this  
14 deposition to five hours. What he did say was  
15 the witness could have 30 minutes on, 15  
16 minutes off, and a nurse could be present if he

17 needed it, the way that I understood based on  
18 the letter from you.  
19 We've been here since 9:30 this morning.  
20 It's now noon. But there would be a total of  
21 two and a half hours today, and I understood  
22 that plaintiffs were prepared to go forward  
23 today, and I'm prepared to go forward tomorrow,  
24 again.

page 85

page 86

1 Certainly, we're not limiting ourselves to  
2 a total of two and a half hours, although I  
3 understand that is maybe all the time he has  
4 available tomorrow. But I specifically wrote  
5 you, Mr. Byassee, and indicated that that might  
6 not be sufficient, and we reserved our right to  
7 go back to court and ask for additional time.  
8 And that's the way we intend to proceed.

9 MR. BYASSEE: Just so we understand,  
10 Dr. Kotin is available for your examination  
11 right now for the remainder of the two and a  
12 half hours. If you choose not to take it,  
13 that's up to you.

14 MS. TEDDER: We reserve our rights.

15 MR. MOTLEY: Have a good lunch.

16 MR. BYASSEE: That's it.

17 (The deposition recessed at 11:55 a.m.)  
18  
19  
20  
21  
22  
23  
24

page 86

page 87

1 IN THE UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF NEW YORK  
3 ROBERT A. FALISE; LOUIS KLEIN, JR.; FRANK MACCIAROLA; and CHRISTIAN E.  
MARKEY, JR., as Trustees,  
4  
5 Plaintiffs,  
6

Case No. -vs-

99 CV

7392 (JBW)

7 THE AMERICAN TOBACCO COMPANY; RJ REYNOLDS TOBACCO  
8 COMPANY; B.A.T. INDUSTRIES, PLC; BROWN & WILLIAMSON TOBACCO  
CORPORATION; PHILIP MORRIS INCORPORATED;  
9 LIGGETT, INC.; and LORILLARD TOBACCO COMPANY,  
10 Defendants.  
11

12 CERTIFICATE OF COMPLETION OF DEPOSITION

13 I, MARY ABERNATHY SEAL, New Mexico CCR #69, DO HEREBY CERTIFY that on  
July 6, 2000, the deposition  
14 of PAUL KOTIN, M.D. was taken before me at the request of, and sealed  
original thereof  
retained by:

15  
16 MR. RONALD L. MOTLEY Attorney for the Falise Plaintiffs  
17 28 Bridgeside Boulevard Mount Pleasant, South Carolina 29464-1792  
18 I FURTHER CERTIFY that copies of this certificate  
19 have been mailed or delivered to the following Counsel of record and parties  
not represented by  
20 Counsel:

21 MS. GAY L. TEDDER Attorney for the Defendant Lorillard  
22 1201 Main Street Kansas City, Missouri 66206  
23

24 I FURTHER CERTIFY that examination of this

page 87

page 88

1 by the witness and all parties present.

2 I FURTHER CERTIFY that the recoverable cost of the original and one  
copy of the  
deposition to Falise

3 Plaintiff's \$\_\_\_\_\_.

4 I FURTHER CERTIFY that I did administer the oath to the witness herein  
prior to the taking  
of this

5 deposition; that I did thereafter report in stenographic shorthand the  
questions and answers set

6 forth herein, and the foregoing is a true and correct transcript of the  
proceeding had upon the  
taking of

7 this deposition to the best of my ability

8 I FURTHER CERTIFY that I am neither employed by nor related to any  
of the parties or

9 attorneys in this case, and that I have no interest whatsoever in the final  
disposition of this case

in

10 any court.

11

12

13 \_\_\_\_\_  
Mary Abernathy Seal Certified Court Reporter

#69

14 License Expires: 12/31/00

15 2092-3MAS

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page 88

page 89

1 FALISE v. AMERICAN TOBACCO COMPANY

2 WITNESS SIGNATURE/CORRECTION PAGE

3 If there are any typographical errors to your deposition, indicate  
them below:

4

5 PAGE LINE

6 \_\_\_\_\_ Change to \_\_\_\_\_

7 \_\_\_\_\_ Change to \_\_\_\_\_

8 \_\_\_\_\_ Change to \_\_\_\_\_

9 Any other changes to your deposition are to be listed below with a  
statement as to the  
reason

10 for such change.

11 PAGE LINE CORRECTION REASON FOR CHANGE

12 \_\_\_\_\_

13 \_\_\_\_\_

14 \_\_\_\_\_

15 \_\_\_\_\_

16 \_\_\_\_\_

17 \_\_\_\_\_

18 I, PAUL KOTIN, M.D., do hereby certify that I have read the  
foregoing pages of my  
testimony  
19 as transcribed and that the same is a true and correct transcript of the  
testimony given by me in  
20 this deposition on July 6, 2000, except for the changes made.

21  
22  
23 \_\_\_\_\_  
PAUL KOTIN, M.D.

24  
page 89  
page 90

I N D E X		
		PAGE
3	EXAMINATION OF PAUL KOTIN, M.D.	
4	By Mr. Motley	4
5	CERTIFICATE OF COMPLETION OF DEPOSITION	87
6	WITNESS SIGNATURE/CORRECTION PAGE	89
8	EXHIBITS MARKED OR FORMALLY IDENTIFIED	
9	1 Curriculum vitae	6
10	2 July 30, 1976, memo	25
11	3 No Smoking Program	30
12	4 March 30, 1977, memo	40
13	5 April 21, 1977, letter with attachment	42
14	6 May 6, 1977, letter	43
15	7 March 31, 1977, memo	46
16	8 Presentation before the National Commission 9	on Smoking and
17	Public Policy	
18	9 Trial Exhibit 26,221	71
19	10 December 4, 1970, memo	75
20	11 Document Bates stamped 681879254 and	79
21	681879418	681879410 through

21  
22  
23  
24  
page 90